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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AASIM NIA,

Plaintiff,

v.

DERRAL ADAMS,

Defendant.

CASE NO. 1:08-cv-00520-AWI-DLB (PC)

ORDER TO SHOW CAUSE

(Doc. 1)

TWENTY (20) DAY DEADLINE

Plaintiff Aasim Nia (“Plaintiff”), Inmate No. T-80306, is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed his complaint on April 16, 2008. (Doc. 1.)

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). However, as a preliminary matter, before the Court will screen Plaintiff’s complaint, it is necessary that Plaintiff have exhausted available administrative remedies prior to filing his complaint.

Plaintiff’s complaint alleges an Equal Protection violation for being housed with gang-affiliated inmates. Plaintiff in his complaint states that he completed the administrative appeal process. Plaintiff states that he appealed to the third level of review, at which his appeal was denied and he was instructed to file a second grievance regarding being housed with gang-affiliated inmates. Plaintiff states that he filed this second grievance on November 7, 2007. By December 21, 2007, Plaintiff had yet to receive a response to his second grievance. (Doc. 1, pp.

1 2, 6.)

2 Pursuant to the Prison Litigation Reform Act of 1995, “[n]o action shall be brought with
3 respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner
4 confined in any jail, prison, or other correctional facility until such administrative remedies as are
5 available are exhausted.” 42 U.S.C. § 1997e(a). Prisoners are required to exhaust the available
6 administrative remedies prior to filing suit. Jones v. Bock, 127 S. Ct. 910, 918-19 (2007);
7 McKinney v. Carey, 311 F.3d 1198, 1199-1201 (9th Cir. 2002). Exhaustion is required
8 regardless of the relief sought by the prisoner and regardless of the relief offered by the process,
9 Booth v. Chruner, 532 U.S. 731, 741 (2001), and the exhaustion requirement applies to all
10 prisoner suits relating to prison life, Porter v. Nussle, 534 U.S. 516, 532 (2002).

11 The California Department of Corrections has an administrative grievance system for
12 prisoner complaints. Cal. Code Regs., tit. 15 § 3084.1 (2007). The process is initiated by
13 submitting a CDC Form 602. Id. at § 3084.2(a). Four levels of appeal are involved, including
14 the informal level, first formal level, second formal level, and third formal level, also known as
15 the “Director’s Level.” Id. at § 3084.5. Appeals must be submitted within fifteen working days
16 of the event being appealed, and the process is initiated by submission of the appeal to the
17 informal level, or in some circumstances, the first formal level. Id. at §§ 3084.5, 3084.6(c). In
18 order to satisfy section 1997e(a), California state prisoners are required to use this process to
19 exhaust their claims prior to filing suit. Woodford v. Ngo, 126 S. Ct. 2378, 2383 (2006);
20 McKinney, 311 F.3d at 1199-1201. “[E]xhaustion is mandatory under the PLRA and . . .
21 unexhausted claims cannot be brought in court.” Jones, 127 S. Ct. at 918-19 (citing Porter, 435
22 U.S. at 524). “All ‘available’ remedies must now be exhausted; those remedies need not meet
23 federal standards, nor must they be ‘plain, speedy, and effective.’” Porter, 534 U.S. at 524
24 (quoting Booth, 532 U.S. at 739 n.5).

25 Plaintiff states in his complaint that he was instructed at the third formal level of review
26 to file another grievance regarding his being housed with a gang-affiliated inmate. On the face of
27 the complaint, it appears that the administrative grievance process is still on-going because
28 administrative remedies remain available. It is thus unclear from Plaintiff’s complaint whether

1 he has completed the administrative grievance process as required by the PLRA.

2 Accordingly, it is HEREBY ORDERED that within **twenty (20) days** of service of this
3 order, Plaintiff must show cause why this Court should not dismiss this action pursuant to 42
4 U.S.C. § 1997e(a).

5 Failure to respond timely to this order will result in dismissal of this action without
6 prejudice.

7
8 IT IS SO ORDERED.

9 **Dated: January 6, 2009**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE